

REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 98-010

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY
PACIFIC REFINERY COMPANY
4901 SAN PABLO AVENUE
HERCULES, CONTRA COSTA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

1. Pacific Refinery Company (PRC) is authorized to discharge treated wastewater and unpolluted stormwater in compliance with the wastewater discharge requirements contained in Order No. 90-104, as amended by Order Nos. 91-026, 91-099, 92-100, and Order No. 96-112 (NPDES Permit No. CA 0005096). On September 10, 1997, PRC terminated the refinery operation, ceased discharge of treated process wastewater, and sold the facility to Hercules LLC, which is a California limited liability company. Since then, no plan of refinery operation has been proposed by the new owner.
2. A previous Complaint was issued by the Executive Officer on June 20, 1995 imposing administrative civil liability against PRC in an amount of \$300,000 for 163 violations of NPDES discharge limits during the period of January 1, 1990 through May 6, 1995. PRC waived a hearing, and paid the full amount. Of this, \$240,000 was used to fund several supplemental environmental projects, and the remaining balance was paid to the Cleanup & Abatement Account.
3. During the period between May 7, 1995 and September 9, 1997, PRC violated its NPDES discharge limits on 230 days, releasing over 24.3 million gallons of inadequately treated wastewater and polluted stormwater to San Pablo Bay, a water of the States:
 - PRC violated on 28 days the 1996 Permit requirements of fish survival rates in its July and August 1997 acute bioassay tests. A Notice of Violation (NOV) was issued to PRC on September 10, 1997 for the repetitive low (to zero percent) survival rates.
 - PRC exceeded its monthly average loading limit for total suspended solids (TSS) in May 1995. It also exceeded the TSS daily maximum concentration limit on May 22, 1997.
 - For 6 weeks PRC violated the requirement of Provision 2 of Order No. 91-099 on the running annual average limit of 0.05 pounds per day for selenium mass emission rate.
 - In October 1996 and May 1997, PRC discharged effluent exceeding the 30-day average mercury concentration limit for 16 and 14 days, respectively. No causes for the exceedances were reported. These discharges violated the effluent limits established in Provision A.3 of the 1996 Permit.
 - PRC violated the daily average nickel concentration limit on three days in October 1995 and one day in August 1996. The discharges in October 1995 were reportedly due to the

introduction of hydroblasting water into the wastewater treatment plant without prior analyzing the wastewater. The hydroblasting water contained high concentrations of nickel. A NOV was issued to PRC on October 30, 1995 citing these violations.

- PRC violated the daily average cyanide concentration limit in its February 18, 1996 discharge.
 - PRC discharged stormwater on April 15, 1996 and August 20, 1997 in violation of the pH requirements established in Provision A.8 of the 1990 Permit. The third pH violation was on April 30, 1996 in which PRC attributed the pH exceedance to instrument failure. Similar pH meter problems have occurred and were cited in the 1995 Complaint.
 - In its December 1996 effluent discharges, tetrachlorodibenzodioxin (TCDD) equivalents was detected at a concentration exceeding by 334% the monthly average limit specified in the 1996 Permit. Additionally, the monthly average polycyclic aromatic hydrocarbon (PAHs) concentration limits for Chrysene and Benzo(a)anthracene were also exceeded.
 - On December 21, 1996, PRC discharged stormwater with oil and grease concentrations exceeding the 1996 Permit requirement of 15 mg/l.
 - PRC did not comply with the Section E.4 of "Standard Provisions and Reporting Requirements", dated August 1993, in its transfer of ownership of the refinery by failing to provide a written notice to the Board at least 30 days in advance of the proposed transfer date. 40CFR122.61 also contains similar requirements on the transfer issue. Board staff only received a written notice one day after the actual transfer.
4. The Executive Officer issued Complaint No. 97-133 to PRC on December 17, 1997. The Complaint proposed administrative civil liability be imposed by the Regional Board in the amount of \$362,000 including \$12,000 for staff costs, pursuant to California Water Code Section 13385. The Complaint addressed the above PRC's violations of its NPDES discharge limits. Since the Complaint was issued, PRC has not waived the public hearing.
 5. This Order imposes administrative civil liability of \$362,000 including \$12,000 for recovery of staff costs.
 6. The Board has fully considered the following factors which are set forth for determination of the amount of civil liability set forth in Water Code Section 13385(e):
 - Nature, Circumstances and Extent of Violations. PRC has discharged more than 24.3 million gallons of partially treated wastewater and polluted stormwater to San Pablo Bay during this period. It violated the effluent limitations and the requirements of several provisions of NPDES Permits as described in finding 3 above for a total of 230 days. Pollutants included conventional, non-conventional and toxics. Many of the toxics are persistent and bioaccumulative.
 - Gravity of Violations. Above-mentioned pollutants at concentrations exceeding the effluent limitations set forth in the 1990 and 1996 Permits have been shown to be toxic to fish and aquatic species to various extent. The discharge of over 24.3 million gallons of wastewater containing these pollutants into San Pablo Bay is believed to have impacted its beneficial uses and aquatic community.

- Degree of Culpability. The various violations were caused by PRC's failure to ensure reliable operation of the wastewater treatment plant and to provide proper and sufficient management oversight of its staff performance.
 - Prior History. In 1995, PRC was fined \$300,000 for 163 violations of NPDES discharge limits during the period of January 1, 1990 through May 6, 1995. Some of the violations cited here (e.g., exceeding limits for pH and mercury, and bioassay test failure) have occurred before, and were either bases of the 1995 Complaint or subjects of notice of violation sent to PRC.
 - Economic Savings. PRC's economic savings would amount to the corporate interest or investment income earned from capital and expenses that would have otherwise been spent on plant improvement and additional staffing needs necessary for compliance with its NPDES permit. The amount of economic savings has not been quantified.
 - Ability to Pay. Since PRC had ceased its refinery operation and sold the property to Hercules LLC before this Complaint, the proposed civil liability is believed to have no effect on its business decision. It should be able to pay the monetary penalty of \$362,000 through its revenue obtained from the sale of the facility and continuous operation in other parts of California and the United States.
7. This action is an order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of CEQA pursuant to Section 15321(a)(2), Title 14 of the California Code of Regulations.
 8. On February 18, 1998, the Board conducted a public hearing at which PRC appeared, and evidence was received concerning PRC.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTION 13385 that Pacific Refinery Company, is civilly liable for the violations of its NPDES discharge limits, and shall pay administrative liability in the amount of \$362,000. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on February 18, 1998.

Loretta K. Barsamian
Executive Officer